

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RUBEN ESCANO,

Plaintiff,

v.

2:22-cv-00360-DHU-GJF

RCI LLC, TIMESCAPE RESORTS LLC,
STEPHEN BRADLEY, MEXICAN
RIVIERA RESORTS UNLIMITED, and
JOHN DOES 1–10,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE’S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

This Matter is before the Court upon the Magistrate Judge’s Proposed Findings and Recommended Disposition (Doc. 58) (“PFRD”), which was filed on November 28, 2022. The PFRD addressed “[the] motions to dismiss filed by Defendant Mexican Riviera Resorts Unlimited (MXRRU) [Doc. 7], Defendant RCI [Doc. 42], and Defendants Timescape Resorts and Steven Bradley [Doc. 50],” and made the following recommendations:

[The PFRD] recommends granting these motions in part by (1) excluding the alleged February 8, 2018, telemarketing call as barred by the statute of limitations and (2) dismissing with prejudice Counts Five and Six, which are founded on a provision of the Telephone Consumer Protection Act (TCPA) that provides no private right of action. The [PFRD further] recommends that the motions otherwise be denied because Plaintiff has (a) made a prima facie showing of personal jurisdiction over Defendants RCI, Timescape, and Bradley; (b) pleaded facts that plausibly suggest RCI, Timescape, and Bradley are liable under the applicable TCPA and New Mexico Unfair Practices Act (NMUPA) provisions; and (c) asserted claims against Timescape and Bradley that are not barred by issue preclusion or claim preclusion.

PFRD at 1–2 (footnote omitted).¹ The PFRD also notified the parties of their ability to file objections within fourteen days and warned them that the failure to file objections would waive appellate review. *Id.* at 37. The fourteen-day deadline has now expired without any of the parties filing objections.

The Tenth Circuit has held that “a party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.” *United States v. One Parcel of Real Property*, 73 F.3d 1057, 1060 (10th Cir. 1996). The parties’ failure to timely object to the Magistrate Judge’s Proposed Findings and Recommended Disposition waives appellate review of both factual and legal questions. *In re Key Energy Res. Inc.*, 230 F.3d 1197, 1199–1200 (10th Cir. 2000); *One Parcel of Real Property*, 73 F.3d at 1059. Furthermore, having reviewed the record and the briefing on the aforementioned motions, the Court concurs with the findings, analysis, and conclusions in the PFRD.

IT IS THEREFORE ORDERED that the PFRD (Doc. 58) is **ADOPTED**.


IT IS FURTHER ORDERED that MXRRU’S Motion to Dismiss (Doc. 7) is **GRANTED IN PART** in that the call allegedly made on February 8, 2018 (Doc. 1-1 at ¶ 88–89) is **DISMISSED** from this litigation as barred by the statute of limitations.

IT IS FURTHER ORDERED that RCI’s Motion to Dismiss (Doc. 42) and Timescape and Bradley’s Motion to Dismiss (Doc. 50) are **GRANTED IN PART** in that Counts Five and Six of the Complaint (Doc. 1-1 at ¶¶ 131–36) are **DISMISSED WITH PREJUDICE**.

¹ The PFRD also briefly addressed “Timescape and Bradley[’s] . . . two-page Request for Judicial Notice” and recommended granting this request by taking notice of two filings in *Escano v. Holidays Network Grp., LLC, et al.*, No. 22cv58-JB/SMV (D.N.M.). PFRD at 1 n.1 & 6 n.4. The Court adopts this recommendation and hereby **GRANTS** Timescape and Bradley’s Request for Judicial Notice (Doc. 51).

IT IS FINALLY ORDERED that the motions to dismiss (Docs. 7, 42, 50) are otherwise **DENIED**.

IT IS SO ORDERED.



HON. DAVID H. URIAS
UNITED STATES DISTRICT JUDGE